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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/068,058	02/05/2002	Phillip Brent Greene	6204-135	8334

7590

10/01/2003

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EXAMINER

LE, HOA T

ART UNIT

PAPER NUMBER

1773

DATE MAILED: 10/01/2003

4

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicant No.

10/068,058

Applicant(s)

GREENE ET AL.

Examiner

H. T. Le

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 45,46 and 48-51 is/are allowed.
- 6) ☒ Claim(s) 1-12,15-17,20-35,38-44 and 47 is/are rejected.
- 7) ☒ Claim(s) 13,18,19,36 and 37 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other: .

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. Claims 3, 15, 16, 22 and 47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 3, "clay particles" has no antecedent basis.

In claims 15 and 16, it is unclear whether the recited "particles" are part of the "bentonite powder" recited in claim 13 upon which they depend. In addition, it's unclear whether the "particles" as recited in these claims are the same as "clay particles" recited in claim 13.

Claim 22 suffers the same deficiency of claim 15 or 16.

The term "low" in claim 47 is a relative term which renders the claim indefinite. The term "low" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

2. Claims 1-12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claims 1-12 require that the coating contain a "swelling agent". However, it is unclear from the instant specification whether the swelling agent means that the agent promotes swelling

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or the agent itself exhibits swelling properties. Thus, the specification fails to provide adequate description as to the term "swelling agent".

3. Claims 1-4, 6-12, 17, 20-35, and 38-44 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a coating comprising bentonite powder, does not reasonably provide enablement for any other materials. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention commensurate in scope with these claims. Throughout the instant specification, only bentonite powder is disclosed as the appropriate coating material. There is no guidance or description such that to permit one skilled in the art to select a material, besides bentonite powder, that can be suitable as the coating material of the claimed animal litter. These claims which fail to include bentonite powder as the coating material are thus deemed broader than the scope of the enabling disclosure.

*Allowable Subject Matter*

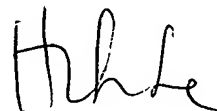
4. Claims 45, 46 and 48-51 are allowable over the prior art references of record.

5. Claims 13-16, 18, 19, 36 and 37 are objected to because they depend on rejected claims but would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims.

6. Claims 15, 16 and 47 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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7. References are cited as art of interest.
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to H. T. Le whose telephone number is 703-308-2415. The examiner can normally be reached on 10:00 a.m. to 6:30 p.m., Mondays to Friday.



H. T. Le  
Primary Examiner  
Art Unit 1773

hl